

AMENDED IN SENATE MAY 20, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 1008

Introduced by Senator Machado

February 21, 2003

An act to amend ~~Section 999.9~~ *Sections 999 and 999.9* of, and to add Section 999.14 to, the Military and Veterans Code, ~~and to amend Section 10115.10 of,~~ and to add Section 10115.9 to, the Public Contract Code, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1008, as amended, Machado. Veterans: contracts: disabled veteran business enterprises.

Under existing law, any state governmental entity that awards contracts for professional bond services and for construction and certain related purposes has annual statewide participation goals of not less than 3% for disabled veteran business enterprises, as defined. *For purpose of these provisions, existing law defines a "disabled veteran" as a veteran, as specified, with a service-connected disability who is a resident of the state.*

This bill would ~~prohibit~~ *specify that* a limited liability company ~~from being~~ *may be* certified as a disabled business enterprise for these purposes *if that company is wholly owned by one or more disabled veterans. The bill would also change the definition of "disabled veteran" to instead mean a veteran, as specified, with a service-connected disability of at least 10% who is domiciled in the state.*

Existing law imposes a civil penalty with respect to, among other things, fraudulently obtaining certification as a disabled veteran business enterprise.

This bill would provide, among other things, that it is unlawful to knowingly and with intent to defraud, fraudulently represent participation of a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract. It would also make it unlawful, ~~and subject to a specified civil penalty,~~ to establish, or ~~cooperate~~ *knowingly aid* in the establishment of, or exercise control over, a firm found to have violated the foregoing prohibitions. The bill would, *in addition to civil penalties*, make it a misdemeanor to violate all of the foregoing prohibitions, thereby imposing a state-mandated local program.

The bill would also permit a court to order the defendant to pay all or a portion of plaintiff's costs and attorneys' fees in a civil action brought for violations of these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 999 of the Military and Veterans Code*
2 *is amended to read:*

3 999. As used in this article, the following definitions apply:

4 (a) "Administering agency" means the Treasurer in the case of
5 contracts for professional bond services, and the Department of
6 General Services' Office of Small Business Certification and
7 Resources, formerly known as the Office of Small and Minority
8 Business, in the case of contracts governed by Section 999.2.

9 (b) "Awarding department" means any state agency,
10 department, governmental entity, or other officer or entity
11 empowered by law to issue bonds or enter into contracts on behalf
12 of the State of California.



(c) “Bonds” means bonds, notes, warrants, certificates of participation, and other evidences of indebtedness issued by or on behalf of the State of California.

(d) “Contract” includes any agreement or joint agreement to provide professional bond services to the State of California or an awarding department. “Contract” also includes any agreement or joint development agreement to provide labor, services, material, supplies, or equipment in the performance of a contract, franchise, concession, or lease granted, let, or awarded for and on behalf of the State of California.

(e) “Contractor” means any person or persons, regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, or age, or any sole proprietorship, firm, partnership, joint venture, corporation, or combination thereof who submits a bid and enters into a contract with a representative of a state agency, department, governmental entity, or other officer empowered by law to enter into contracts on behalf of the State of California. “Contractor” includes any provider of professional bond services who enters into a contract with an awarding department.

(f) “Disabled veteran” means a veteran of the military, naval, or air service of the United States, including, but not limited to, the Philippine Commonwealth Army, the Regular Scouts (“Old Scouts”), and the Special Philippine Scouts (“New Scouts”), with a service-connected disability ~~who is a resident of~~ *of at least 10 percent and who is domiciled in* the State of California.

(g) (1) “Disabled veteran business enterprise” means a business concern certified by the administering agency as meeting all of the following requirements:

(A) It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture’s management and control and earnings are held by one or more disabled veterans.

(B) The management and control of the daily business operations are by one or more disabled veterans. The disabled

1 veterans who exercise management and control are not required to
2 be the same disabled veterans as the owners of the business
3 concern.

4 (C) It is a sole proprietorship, corporation, or partnership with
5 its home office located in the United States, which is not a branch
6 or subsidiary of a foreign corporation, foreign firm, or other
7 foreign-based business.

8 (2) Notwithstanding paragraph (1), after the death or the
9 certification of a permanent medical disability of a disabled
10 veteran who is a majority owner of a business concern that
11 qualified as a disabled veteran business enterprise prior to that
12 death or certification of a permanent medical disability, and solely
13 for purposes of any contract entered into before that death or
14 certification, that business concern shall be deemed to be a
15 disabled veteran business enterprise for a period not to exceed
16 three years after the date of that death or certification of a
17 permanent medical disability, if the business concern is inherited
18 or controlled by the spouse or child of that majority owner, or by
19 both of those persons.

20 (h) “Foreign corporation,” “foreign firm,” and
21 “foreign-based business” means a business entity that is
22 incorporated or has its principal headquarters located outside the
23 United States of America.

24 (i) “Goal” means a numerically expressed objective that
25 awarding departments and contractors are required to make efforts
26 to achieve.

27 (j) “Management and control” means effective and
28 demonstrable management of the business entity.

29 (k) “Professional bond services” include services as financial
30 advisers, bond counsel, underwriters in negotiated transactions,
31 underwriter’s counsel, financial printers, feasibility consultants,
32 and other professional services related to the issuance and sale of
33 bonds.

34 *SEC. 2.* Section 999.9 of the Military and Veterans Code is
35 amended to read:

36 999.9. (a) It shall be unlawful for a person to:

37 (1) Knowingly and with intent to defraud, fraudulently obtain,
38 retain, attempt to obtain or retain, or aid another in fraudulently
39 obtaining or retaining or attempting to obtain or retain,



1 certification as a disabled veteran business enterprise for the
2 purpose of this article.

3 (2) Willfully and knowingly make a false statement with the
4 intent to defraud, whether by affidavit, report, or other
5 representation, to a state official or employee for the purpose of
6 influencing the certification or denial of certification of any entity
7 as a disabled veteran business enterprise.

8 (3) Willfully and knowingly obstruct, impede, or attempt to
9 obstruct or impede, any state official or employee who is
10 investigating the qualifications of a business entity which has
11 requested certification as a disabled veteran business enterprise.

12 (4) Knowingly and with intent to defraud, fraudulently obtain,
13 attempt to obtain, or aid another person in fraudulently obtaining
14 or attempting to obtain, public moneys to which the person is not
15 entitled under this article.

16 (5) Knowingly and with intent to defraud, fraudulently
17 represent participation of a disabled veteran business enterprise in
18 order to obtain or retain a bid preference or a state contract.

19 (6) Establish, or ~~cooperate~~ *knowingly aid* in the establishment
20 of, or exercise control over, a firm found to have violated any of
21 paragraphs (1) to (5), inclusive. ~~Any person or firm who violates~~
22 ~~this paragraph is guilty of a misdemeanor and shall be liable for a~~
23 ~~civil penalty not to exceed fifty thousand dollars (\$50,000) for the~~
24 ~~first violation, and a civil penalty not to exceed two hundred~~
25 ~~thousand dollars (\$200,000) for each additional, or subsequent~~
26 ~~violation.~~

27 (b) Any person who violates any of the provisions of
28 subdivision (a) shall be guilty of a misdemeanor punishable by
29 imprisonment in the county jail not exceeding six months or by a
30 fine not exceeding one thousand dollars (\$1,000), or by both. In
31 addition, ~~and except as specified in paragraph (6) of subdivision~~
32 ~~(a),~~ the person shall be liable for a civil penalty not to exceed ten
33 thousand dollars (\$10,000) for the first violation, and a civil
34 penalty not to exceed ~~thirty~~ *fifty* thousand dollars ~~(\$30,000)~~
35 ~~(\$50,000)~~ for each additional or subsequent violation. The court
36 may order the defendant to pay all or a portion of *the* plaintiff's
37 costs and attorneys' fees in a civil action brought pursuant to this
38 section.

39 (c) (1) Any person who violates subdivision (a) shall, if
40 certified as a disabled veteran business enterprise, have the

1 business' certification revoked for a period of not less than ~~one~~
2 ~~year~~ *three years*, and shall, in addition to the penalties provided for
3 in subdivision (b), be suspended from bidding on, or participating
4 as either a contractor, subcontractor, or supplier in, any state
5 contract or project for a period of not less than ~~one year~~ *three years*.
6 However, for an additional or subsequent violation the period of
7 suspension shall be extended for a period of not less than ~~three~~ *five*
8 years. The certification revocation shall apply to the principals of
9 the business and any subsequent businesses formed by those
10 principals.

11 (2) Any business or person who fails to satisfy the penalties
12 imposed pursuant to subdivision (b) and paragraph (1) shall be
13 prohibited from further contracting with the state until the
14 penalties are satisfied.

15 (d) The awarding department shall report all alleged violations
16 of this section to the Office of Small and Minority Business. The
17 office shall subsequently report all alleged violations to the
18 Attorney General who shall determine whether to bring a civil
19 action against any person or firm for violation of this section.

20 (e) The office shall monitor the status of all reported violations
21 and shall maintain and make available to all state departments a
22 central listing of all firms and persons who have been determined
23 to have committed violations resulting in suspension.

24 (f) No awarding department shall enter into any contract with
25 any person suspended for violating this section during the period
26 of the person's suspension. No awarding department shall award
27 a contract to any contractor utilizing the services of any person as
28 a subcontractor suspended for violating this section during the
29 period of the person's suspension.

30 (g) The awarding department shall check the central listing
31 provided by the office to verify that the person or contractor to
32 whom the contract is being awarded, or any person being utilized
33 as a subcontractor or supplier by that person or contractor, is not
34 under suspension for violating this section.

35 ~~SEC. 2.—~~

36 *SEC. 3.* Section 999.14 is added to the Military and Veterans
37 Code, to read:

38 999.14. A limited liability company may ~~not~~ be certified as a
39 disabled veteran business enterprise pursuant to this article *if the*

1 *limited liability company is wholly owned by one or more disabled*
2 *veterans.*

3 ~~SEC. 3.—~~

4 *SEC. 4.* Section 10115.9 is added to the Public Contract Code,
5 to read:

6 10115.9. A limited liability company may ~~not~~ be certified as
7 a disabled veteran business enterprise pursuant to this article *if the*
8 *limited liability company is wholly owned by one or more disabled*
9 *veterans.*

10 ~~SEC. 4.~~ Section 10115.10 of the Public Contract Code is
11 amended to read:

12 10115.10. (a) It shall be unlawful for a person or firm to:

13 ~~(1) Knowingly and with intent to defraud, fraudulently obtain,~~
14 ~~retain, attempt to obtain or retain, or aid another in fraudulently~~
15 ~~obtaining or retaining or attempting to obtain or retain, acceptance~~
16 ~~or certification as a minority, women, or disabled veteran business~~
17 ~~enterprise, for the purposes of this article.~~

18 ~~(2) Willfully and knowingly make a false statement with the~~
19 ~~intent to defraud, whether by affidavit, report, or other~~
20 ~~representation, to a state official or employee for the purpose of~~
21 ~~influencing the acceptance or certification or denial of acceptance~~
22 ~~or certification of any entity as a minority, women, or disabled~~
23 ~~veteran business enterprise.~~

24 ~~(3) Willfully and knowingly obstruct, impede, or attempt to~~
25 ~~obstruct or impede, any state official or employee who is~~
26 ~~investigating the qualifications of a business entity which has~~
27 ~~requested acceptance or certification as a minority, women, or~~
28 ~~disabled veteran business enterprise.~~

29 ~~(4) Knowingly and with intent to defraud, fraudulently obtain,~~
30 ~~attempt to obtain, or aid another person or firm in fraudulently~~
31 ~~obtaining or attempting to obtain, public moneys to which the~~
32 ~~person is not entitled under this article.~~

33 ~~(5) Knowingly and with intent to defraud, fraudulently~~
34 ~~represent participation of a disabled veteran business enterprise in~~
35 ~~order to obtain or retain a bid preference or a state contract.~~

36 ~~(6) Establish, or cooperate in the establishment of, or exercise~~
37 ~~control over, a firm found to have violated any of paragraphs (1)~~
38 ~~to (5), inclusive. Any person or firm who violates this paragraph~~
39 ~~is guilty of a misdemeanor and shall be liable for a civil penalty not~~
40 ~~to exceed fifty thousand dollars (\$50,000) for the first violation,~~

1 and a civil penalty not to exceed two hundred thousand dollars
2 (\$200,000) for each additional, or subsequent violation.

3 (7) This section shall not apply to minority and women
4 business enterprise programs conducted by public utility
5 companies pursuant to the California Public Utilities
6 Commission's General Order 156.

7 (b) Any person who violates any of the provisions of
8 subdivision (a) shall be guilty of a misdemeanor punishable by
9 imprisonment in the county jail not exceeding six months or by a
10 fine not exceeding one thousand dollars (\$1,000), or by both. In
11 addition, and except as specified in paragraph (6) of subdivision
12 (a), the person shall be liable for a civil penalty not to exceed ten
13 thousand dollars (\$10,000) for the first violation, and a civil
14 penalty not to exceed thirty thousand dollars (\$30,000) for each
15 additional or subsequent violation. The court may order the
16 defendant to pay all or a portion of plaintiff's cost and attorney's
17 fees in a civil action brought pursuant to this section.

18 (e) (1) Any person who violates subdivision (a) shall, if
19 certified as a disabled veteran business enterprise, have the
20 business' certification revoked for a period of not less than one
21 year, and shall, in addition to the penalties provided for in
22 subdivision (b), be suspended from bidding on, or participating as
23 either a contractor, subcontractor, or supplier in, any state contract
24 or project for a period of not less than one year. However, for an
25 additional or subsequent violation the period of suspension shall
26 be extended for a period of not less than three years. The
27 certification revocation shall apply to the principals of the business
28 and any subsequent businesses formed by those principals.

29 (2) Any business or person who fails to satisfy the penalties
30 imposed pursuant to subdivision (b) and paragraph (1) shall be
31 prohibited from further contracting with the state until the
32 penalties are satisfied.

33 (d) The awarding department shall report all alleged violations
34 of this section to the Office of Small and Minority Business. The
35 office shall subsequently report all alleged violations to the
36 Attorney General who shall determine whether to bring a civil
37 action against any person or firm for violation of this section.

38 (e) The office shall monitor the status of all reported violations
39 and shall maintain and make available to all state departments a

1 ~~central listing of all firms and persons who have been determined~~
2 ~~to have committed violations resulting in suspension.~~

3 ~~(f) No awarding department shall enter into any contract with~~
4 ~~any person or firm suspended for violating this section during the~~
5 ~~period of the person's or firm's suspension. No awarding~~
6 ~~department shall award a contract to any contractor utilizing the~~
7 ~~services of any person or firm as a subcontractor suspended for~~
8 ~~violating this section during the period of the person's or firm's~~
9 ~~suspension.~~

10 ~~(g) The awarding department shall check the central listing~~
11 ~~provided by the office to verify that the person, firm, or contractor~~
12 ~~to whom the contract is being awarded, or any person or firm being~~
13 ~~utilized as a subcontractor by that person, firm, or contractor, is not~~
14 ~~under suspension for violating this section.~~

15 SEC. 5. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.

